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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Chris Kohler,)	CV 11-4451 RSWL (SPx)
)	
Plaintiff,)	
)	Statement of
v.)	Uncontroverted Facts and
)	Conclusions of Law Re:
)	Cross-Motion for Summary
)	Judgment of Defendant Bed
Bed Bath & Beyond of)	Bath & Beyond of
California, LLC, et. al)	California Limited
)	Liability Company [57]
)	
Defendants.)	
)	

After consideration of the papers and arguments in support of and in opposition to the Cross-Motion for Summary Judgment of Defendant Bed Bath & Beyond of California Limited Liability Company [57], this Court makes the following findings of fact and conclusions of law.

UNCONTROVERTED FACTS

1. Plaintiff Chris Kohler ("Plaintiff") is physically disabled as defined by all applicable California and U.S. laws and requires use of a

1 wheelchair when traveling in public. Kohler Decl.

2 ¶¶ 1-2.

3 2. Defendant Bed Bath & Beyond of California, LLC
4 ("Defendant") operates a store in the Lake Elsinore
5 Marketplace ("Shopping Center") located in Lake
6 Elsinore, California. The Shopping Center comprises
7 multiple retail and restaurant establishments. Freeman
8 Decl., Ex. 1.

9 3. The Shopping Center, where Defendant's store is
10 located, has a parking lot. Freeman Decl., Ex. 1.

11 4. Defendant signed a lease agreement with the
12 owner of the Shopping Center, Lake Elsinore Marketplace
13 LLC ("Landlord"). Id.

14 5. The lease agreement states that the Shopping
15 Center is a "common area" that is "available for the
16 joint use and benefit" of Defendant, other Shopping
17 Center tenants, and customers. Id.

18 6. The lease agreement states that Landlord is
19 responsible for maintenance, repairs, and compliance
20 with "all applicable Legal Requirements" in the common
21 areas. Id.

22 7. As of June 5, 2012, at least one bathroom stall
23 door in the men's restroom at Defendant's store has
24 self-closing hinges. Cerda Decl. ¶ 3, Ex. 2.

25 8. As of June 21, 2012, there are two paper towel
26 dispensers located in the men's restroom at Defendant's
27 store. One of the paper towel dispensers can be
28 operated with a closed fist. Jaggli Decl. ¶ 2.

1 9. As of June 5, 2012, there are no exposed pipes
2 underneath the sinks in the men's restroom at
3 Defendant's store. Cerda Decl. ¶ 2, Ex. 1.

4 **CONCLUSIONS OF LAW**

5 1. Under the Americans with Disabilities Act
6 ("ADA"), a disabled person suffers an injury-in-fact
7 for the purposes of constitutional standing, when
8 discriminatory architectural barriers deter him from
9 returning or "otherwise interfere with his access to"
10 the facility. Chapman v. Pier 1 Imports, 631 F.3d 939,
11 950 (9th Cir. 2011).

12 2. Plaintiff has alleged that he visited
13 Defendant's store in the Shopping Center on three
14 occasions and encountered architectural barriers that
15 have affected or could affect his access to the
16 facility in the future. Kohler Decl. ¶¶ 5-8.
17 Accordingly, Plaintiff has sufficiently alleged injury-
18 in-fact and therefore, possesses constitutional
19 standing to assert his ADA claims.

20 3. Under the ADA, liability for non-compliance is
21 assigned to "any person who owns, leases (or leases
22 to), or operates a place of public accommodation." 42
23 U.S.C. § 12181(a).

24 4. Pursuant to Defendant's lease agreement with
25 Landlord, Defendant does not own, lease (or lease to),
26 or operate the parking lot at the Shopping Center.
27 Accordingly, Defendant is not liable under the ADA for
28 the slope and cross slopes of the disabled parking

1 spaces and access aisles in the Shopping Center parking
2 lot.

3 5. The only remedy available under the ADA for a
4 private plaintiff is injunctive relief, therefore, "a
5 defendant's voluntary removal of alleged barriers prior
6 to trial can have the effect of mooting a plaintiff's
7 ADA claim." Oliver v. Ralphs Grocery Co., 654 F.3d
8 903, 905 (9th Cir. 2011).

9 6. Under the ADA, at least one stall in a public
10 accommodation restroom requires an "outward swinging,
11 self-closing door." ADAAG § 4.23.4.

12 7. Since at least one bathroom stall door in the
13 men's restroom at Defendant's store is self-closing as
14 of June 5, 2012, Defendant is ADA compliant and
15 Plaintiff's claim for relief regarding the stall door
16 is moot.

17 8. Under the ADA, "controls and operating
18 mechanisms shall be operable with one hand and shall
19 not require tight grasping, pinching, or twisting of
20 the wrist." ADAAG § 4.27.4.

21 9. Since one of the paper towel dispensers in the
22 men's restroom at Defendant's store can be operated
23 with a closed fist as of June 21, 2012, Defendant is
24 ADA compliant and Plaintiff's ADA claim regarding paper
25 towel dispenser controls is moot.

26 10. Under the ADA, hot water and drain pipes under
27 lavatories must be "insulated or otherwise configured
28 to protect against contact." ADAAG § 4.19.4.

1 11. Since the pipes underneath the sinks in the
2 men's restroom at Defendant's store are fully insulated
3 as of June 5, 2012, Defendant is ADA compliant and
4 Plaintiff's ADA claim regarding the pipes is moot.

5 12. The ADA requirements for strike side clearance
6 at doors in public accommodations refer to clear floor
7 space and are unrelated to wall length. ADAAG §
8 4.13.6, Fig. 25.

9 13. Plaintiff's asserted barrier regarding wall
10 length on the strike side of the door entering the
11 men's restroom at Defendant's store is not an
12 actionable barrier under the ADA.

13 14. Plaintiff's asserted barrier regarding wall
14 length on the strike side of the door exiting the men's
15 restroom at Defendant's store is not an actionable
16 barrier under the ADA.

17 15. The ADA does not require all toilet paper
18 rolls to be located within twelve inches of the front
19 of the toilet seat in restroom stalls. ADAAG § 4.13.6,
20 Fig. 29(b).

21 16. Plaintiff's asserted barrier regarding the
22 distance of the toilet paper rolls to the front of the
23 toilet seat in the bathroom stall is not an actionable
24 barrier under the ADA.

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IT IS SO ORDERED.

RONALD S.W. LEW

Senior, U.S. District Court Judge